

# FEDERAL COMMUNICATIONS COMMISSION

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In Re Applications of:	)	
	)	MM DOCKET No.: 94-10
	)	
	)	File No. BR-890929VC
THE LUTHERAN CHURCH/	)	File No. BR-890929VB
MISSOURI SYNOD	)	
	)	
For Renewal of Licenses	)	
of Stations KFUD/KFUD-FM	)	
Clayton, Missouri	)	

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Clayton, Missouri	)	

Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Friday,  
February 9, 1996

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:05 a.m.

BEFORE: HON. JOSEPH A. MARINO, Chairman  
MARJORIE REED GREENE, Member  
Review Board

APPEARANCES:

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Hearing Began: 10:05 a.m.

Hearing Ended: 11:25 a.m.

1                   P R O C E E D I N G S

2                   CHAIRMAN MARINO: The Review Board will hear oral  
3 argument in the Clayton, Missouri, proceeding.

4                   Who is going to argue for the Petitioner, NAACP,  
5 this morning?

6                   MR. HONIG: David Honig, Your Honor.

7                   CHAIRMAN MARINO: And for the Licensee, KFUEO,  
8 KFUEO-FM?

9                   MS. SCHMELTZER: Kathryn Schmeltzer of the firm  
10 Fisher, Wayland, Cooper, Leader & Zaragoza.

11                  CHAIRMAN MARINO: And for the Mass Media Bureau?

12                  MR. ZAUNER: Robert A. Zauner.

13                  CHAIRMAN MARINO: Okay.

14                  Mr. Honig, do you want to begin? And how much  
15 time do you want to reserve for rebuttal?

16                  MR. HONIG: Seven minutes.

17                  May it please the Board.

18                  First realizing that this may be the last argument  
19 that this tribunal hears, I know I speak for all of the  
20 practitioners in the room and wishing to wish the Board God  
21 speed.

22                  CHAIRMAN MARINO: Thank you.

23                  MR. HONIG: And thank you for having been there  
24 all these years to provide us with guidance and help us do  
25 our task better.

1           When the Commission created this body in August  
2   1962, it could not imagine the changes that have occurred in  
3   the industry and the change in meaning of what a broadcast  
4   license is.

5           Two years after this Board was created, the  
6   Commission modified its rules and said the functioning of  
7   the Review Board has been a source of satisfaction to the  
8   Commission. By virtue of delegations of authority made to  
9   the Board in hearing proceedings, the Commission has been  
10  enabled to devote a larger portion of its time and energies  
11  to major matters of policy and planning with the cases of  
12  adjudication involving issues of general communications'  
13  importance.

14           Could the Commission ever have imagined that here  
15  we would be, more than 30 years later, considering what is  
16  perhaps the greatest possible issue of general  
17  communications' importance. That issue being what is a  
18  broadcast license? Is it a privilege or is it a right?

19           And after deregulation, which is essentially  
20  complete after yesterday, with President Clinton's signing  
21  of the bill, when a radio station need only comply with two  
22  major substantive requirements, that it tell the truth to  
23  the Commission, and that it not engage in race  
24  discrimination by practice or policy.

25           Is there a policy that the Commission will have of

1 enforcing those bedrock requirements in such a way that the  
2 intent of Congress, in enacting Section 309, will be  
3 effectuated, and that is that a licensee that doesn't obey  
4 those bedrock requirements, no matter how long tenured that  
5 licensee may be, and no matter whether the licensee  
6 attempted to rescue itself much later, it's not entitled to  
7 renewal and it is entitled to defend its record and to try  
8 to show rehabilitation in a subsequent proceeding where it  
9 competes with other applicants.

10 I want to begin by pointing out that Section  
11 2080(a) of the Rule that we're discussing today has two  
12 sentences. "Equal opportunity in employment shall be  
13 afforded by all licensees or permittees." And then it goes  
14 on, "And no person shall be discriminated against in  
15 employment by such stations."

16 This case is about the first of those two  
17 sentences.

18 The Commission, when it designated this  
19 proceeding, knew that there had been no individual  
20 complaints. Indeed, there had been, for all they knew, no  
21 minorities that applied. What it knew was that there was a  
22 written policy, something very rare these days in the law of  
23 discrimination.

24 There had been written statements, unknown to it  
25 as yet, relating to religious preferences that were

1 contained in files that later came out in discovery. And it  
2 certainly knew that there had been a written statement in  
3 the pleadings going to a perception that people of a certain  
4 color might be less likely to have classical music  
5 expertise.

6 MS. GREENE: Mr. Honig, let me interrupt you for  
7 just a minute and go back to a statement you made just a  
8 moment ago that the rule is about two things, equal  
9 opportunity and non-discrimination.

10 And you said that this case turns on equal  
11 opportunity, and we're not talking about then  
12 discrimination?

13 MR. HONIG: No. The rule has two components, non-  
14 discrimination and affirmative action. Within the non-  
15 discrimination component, there are two sub-components. One  
16 that states "Equal opportunity shall be afforded." That's  
17 policy, irrespective of whether there is a named victim.  
18 And the second sentence speaks to "No person, an individual,  
19 shall be discriminated against." Catoctin was the second.

20 MS. GREENE: And you're telling us, for this  
21 argument, that we're not talking about any allegations or  
22 any issue of discrimination against any individuals.

23 MR. HONIG: We know of no individual, because in  
24 fact it would be ironic if the only way -- if in a case like  
25 this, because a policy of discrimination is so perfect, that



1 no minorities even apply. Then that's acceptable. But only  
2 in a case like Catoctin, where someone accidentally walks in  
3 the door and then is brave enough to come forward and it's  
4 less than 15 employees, so the Commission, rather than the  
5 EEOC has to do it, would you ever have your license be at  
6 risk.

7 Let me turn to what the Commission said in the  
8 Hearing Designation Order, because I think that points out  
9 the fundamental flaw in the Judge's reasoning.

10 The Commission knew of course that there were no  
11 named victims but it knew what its policy was. And it knew  
12 what pleadings were filed and what was said about this  
13 stereotype, for which there was no evidence. And it said  
14 that "Since the decision not to recruit was based apparently  
15 on this stereotype, it would appear" -- I'm quoting page  
16 923, paragraph 25 of the Hearing Designation Order -- "It  
17 would appear that the licensee's reasons for its failure to  
18 conduct recruitment at the FM station are inherently  
19 discriminatory and not based on the results of any actual  
20 recruitment efforts."

21 That poses --

22 MS. GREENE: Isn't that the issue that was  
23 designated for hearing as opposed to a conclusion that's  
24 drawn?

25 MR. HONIG: No. The Commission did not say "We

1 want the Judge to determine whether this is inherently  
2 discriminatory." The law of the case is that this policy,  
3 written and filed with the Commission and explored through  
4 four letters, was inherently discriminatory. It's more akin  
5 to what happens when you have a dark station. The  
6 Commission doesn't designate a dark station case by saying,  
7 "We want the Judge to find out whether the station was  
8 dark." It will say, "The station was inherently dark."

9 At that point, it should be an easy case. Was it  
10 dark? Was it your station? Were you responsible? And  
11 that's it.

12 This should have been an easy case then. If it's  
13 inherently discriminatory, then they're entitled to a  
14 hearing on the question of was it your station, was it your  
15 policy, was this a frolic or a detour by your lawyers? And  
16 that's it.

17 MS. GREENE: I want to go back to the language  
18 that you just read to us. "It would appear that the  
19 licensee's reasons are inherently discriminatory."

20 Dropping to paragraph 26, at the bottom of the  
21 page 123, which you're reading, "In view of the foregoing,"  
22 the discussion of why it would appear there are problems,  
23 "it appears that there are substantial material questions of  
24 fact. These questions must be resolved in a hearing  
25 proceeding."

1           Isn't the ultimate question to be resolved whether  
2           or not the practices and policies were discriminatory?

3           MR. HONIG: It appears that substantial questions  
4           of fact and so forth exist as to whether the policies are  
5           discriminatory in violation.

6           What the Commission found was that they were  
7           inherently discriminatory and what the hearing was for was  
8           to find out whether this inherently discriminatory policy  
9           violated the EEO rule. And that should have been a simple  
10          hearing.

11          What the Judge was not permitted to do was to take  
12          that language and then go back and start all over.

13          Let me explain how that happened. The words  
14          "inherently discriminatory" have a well-established meaning  
15          in the cases. In several appeals cases, there's a long line  
16          of them that basically say, "Construing whether inherently  
17          discriminatory behavior or policies would violate the  
18          Commission's rules and policies and the policies of the  
19          Act."

20          Courts have repeatedly said, and this is the  
21          language of Bilingual II at page 629, 595 and 621.  
22          "Intentional discriminatory almost invariably would  
23          disqualify a broadcaster from a position of public  
24          trusteeship."

25          The Judge did --

1 MS. GREENE: But if I understand your argument,  
2 you are telling me that the Hearing Designation Order  
3 language, that it appears that this is inherently  
4 discriminatory, is the conclusion.

5 MR. HONIG: It is a conclusion of law, based on  
6 facts which at that point were right before the --

7 MS. GREENE: Facts which are to be pursued in  
8 hearing to determine whether the licensee had discriminatory  
9 intent.

10 MR. HONIG: No. It's inherently discriminatory.  
11 The Commission found that. That's done. At that point it's  
12 whether it violates the rule that the Commission designated.  
13 And the rule says, "Equal opportunity shall be afforded."  
14 Did that afford equal opportunity?

15 But that's not what the Judge did. What he said,  
16 and I refer you to page 9908 of the Initial Decision,  
17 paragraph 198, where the Judge says, "The HDO apparently  
18 considered this argument relating to classical music as  
19 inherently discriminatory; however, the advancement of such  
20 an argument in and of itself does not establish a  
21 discriminatory mind-set."

22 That's an attempt to rewrite and to overrule the  
23 Hearing Designation Order. And that's not what judges are  
24 permitted to do. That's the law of the case. It's not the  
25 Judge's province to say that he disagrees that it's

1 inherently discriminatory. That's his starting point.

2 The Commission certainly knew that there were no  
3 individual allegations of discrimination by specific people  
4 who wouldn't have known necessarily of this policy and thus  
5 wouldn't have known they were discriminated against. That's  
6 how discrimination typically works.

7 Let me add further, if there's any doubt that what  
8 we're talking about is "what is policy" rather than an  
9 individual case.

10 On page 9888 of the Hearing Designation Order,  
11 there you have --

12 CHAIRMAN MARINO: Which page? I'm sorry.

13 MR. HONIG: It's 9888, paragraph 66.

14 CHAIRMAN MARINO: Thank you.

15 MR. HONIG: There is set out the statements that  
16 are made in the model EEO program which was tracked by this  
17 licensee and virtually all licensees. It is the policy of  
18 KFUD and KFUD-FM, to provide equal opportunity.

19 MS. GREENE: We're hearing some confusion as to --

20 CHAIRMAN MARINO: Could we back up again?

21 MR. HONIG: Sure.

22 CHAIRMAN MARINO: I asked you, and I can't find  
23 your citation. And apparently Ms. Greene can't either.

24 What are you reading from?

25 MR. HONIG: The Initial Decision.

1 CHAIRMAN MARINO: Oh, the Initial Decision. Okay.

2 I thought you meant the Designation Order.

3 MR. HONIG: No, I'm sorry.

4 MS. GREENE: What paragraph?

5 MR. HONIG: Paragraph 198 of the Initial Decision.

6 CHAIRMAN MARINO: Thank you.

7 MR. HONIG: If I said HDO I apologize.

8 CHAIRMAN MARINO: That's all right.

9 MR. HONIG: Okay.

10 CHAIRMAN MARINO: We've got it straightened out.

11 MR. HONIG: The policy itself is set out on  
12 page -- the station said it adopted -- was set out on page  
13 9888 in paragraph 66.

14 I mention this because one piece of evidence going  
15 to whether there's discrimination that the Commission has  
16 pointed out in a number of cases starting with Albany Radio,  
17 for example, Metroplex in '84, is whether the licensee  
18 behaves in such a way as to cover it up, as to not be candid  
19 about it, not to be completely candid. In fact, the first  
20 time it's challenged.

21 Here you have explicit statements, virtually after  
22 deregulation in '81, all that the Commission has to rely on  
23 anymore with a postcard renewal on whether under 309(e) they  
24 can renew or not renew, is whether these words "It is the  
25 policy to provide equal employment opportunity" are true and

1 mean anything. And the Judge found correctly that that  
2 wasn't really their policy.

3 Now, this brings us back --

4 MS. GREENE: When you're discussing this,  
5 distinguish between policy and practice, because I think  
6 those are two distinct points that we have to look at in  
7 this case.

8 TIMEKEEPER: Mr. Honig, I just want to interrupt  
9 one second to say he is up to his rebuttal time.

10 CHAIRMAN MARINO: Fine.

11 Go ahead. We'll give you some time for rebuttal  
12 if you need it, but answer Ms. Greene's question.

13 MR. HONIG: The policy was stated in the internal  
14 files, Lutheran's preferred, which we'll emphasize is  
15 virtually the same as saying Jews, Catholics and so forth  
16 not preferred -- was stated in the employment application  
17 forms. That is also a practice because that's a document  
18 which is shared with job applicants who would then see it  
19 and, as most human beings, since they don't go where they're  
20 not wanted, may have just turned away.

21 So in that sense, it's mostly just written policy  
22 concealed until it came out in this case, but there's also  
23 some elements of practice.

24 Thank you very much.

25 CHAIRMAN MARINO: Let me ask you about your

1 arguments.

2           You haven't touched your first argument. What  
3 exactly are you asking us to do under point (a) of your  
4 brief? Are you asking us to remand this case back to the  
5 Chief ALJ for reassignment to some other Administrative Law  
6 Judge? You've got some rhetoric at the beginning which  
7 seems to imply that that's what you want to do.

8           MR. HONIG: In the alternative.

9           CHAIRMAN MARINO: What do you want us to do?

10          MR. HONIG: In the alternative. If you are able  
11 to find, and I think you have discretion to find, that even  
12 on this flawed record there is sufficient reason to deny  
13 renewal, of course we want you do that now.

14          If you feel that there's not enough in this  
15 record, then I would hope that you'd turn to the flaws in  
16 the record and remand for additional proceedings.

17          CHAIRMAN MARINO: But to the extent that you quote  
18 from the United Church of Christ, I mean you don't say it  
19 yourself in so many words, but are you alleging that this  
20 Judge was biased?

21          MR. HONIG: No. I don't think the Judge was  
22 biased in the sense of racially biased or -- and certainly  
23 not in the sense of favoring one side over another for  
24 impermissible reasons. Absolutely not.

25          CHAIRMAN MARINO: Okay.



1           MR. HONIG: I think though, that it's fair to say  
2   that from the rulings and from the construction of the HDO  
3   that the Judge didn't understand what discrimination is and  
4   how it works. Many people don't.

5           CHAIRMAN MARINO: That's fair enough. Thank you.

6           MR. HONIG: That's not bias.

7           CHAIRMAN MARINO: And if you had another point or  
8   two that you wanted to cover --

9           MR. HONIG: I'll hold it.

10          CHAIRMAN MARINO: Okay.

11          MR. HONIG: I'll hold it.

12          CHAIRMAN MARINO: You have your full seven minutes  
13   for rebuttal.

14          MR. HONIG: Thank you, sir.

15          Ms. Schmeltzer.

16          MS. SCHMELTZER: Sir.

17          CHAIRMAN MARINO: While we're tidying up these  
18   briefs, let me ask you about your procedural arguments.

19          MS. SCHMELTZER: May I just say that I'm reserving  
20   three minutes for rebuttal.

21          CHAIRMAN MARINO: Yes, sure.

22          MS. SCHMELTZER: And I'd also like to introduce  
23   some guests in the courtroom today. We have Reverend Paul  
24   Devantier, who is the Executive Director of the Board for  
25   Communications Services of the Lutheran Church, Missouri

1 Synod, and we also have Mr. Roland Eggerding, who is the  
2 Chairman of the Standing Committee on Broadcast for the  
3 Board for Communications Services.

4 CHAIRMAN MARINO: If we accept your last three  
5 arguments, what do we do with this case? Or your last three  
6 points. Vacate the Designation Order, scrap the record and  
7 start --

8 MS. SCHMELTZER: On the constitutional issue and  
9 the -- I think that the Commission needs to seriously  
10 reconsider its EEO rules as they apply to religious  
11 broadcasting.

12 CHAIRMAN MARINO: Did you ask the Commission in a  
13 timely fashion to do that in this case? Did you at any  
14 point in the pre-hearing stage, which went on for years,  
15 suggest to the Commission that King's Garden was no longer  
16 good law?

17 MS. SCHMELTZER: We have -- well, first of all,  
18 the Church was trying to comply with the Commission's EEO  
19 rules over the years as best it could. It was not until the  
20 middle of the hearing that the actual intrusion upon the  
21 Church's processes became very evident, when the positions,  
22 when the Church was subjected to cross-examination about  
23 which positions deserved religious preferences.

24 CHAIRMAN MARINO: But what --

25 MS. SCHMELTZER: We did make an argument right at

1 the hearing that we felt that that was intrusive.

2 CHAIRMAN MARINO: But as far as the Commission was  
3 concerned and as far as what the Church argued to the  
4 Commission, you never put the Commission on notice that you  
5 had any questions about King's Garden. In fact, didn't the  
6 Church invoke King's Garden in its defense in paragraph 21  
7 of the Designation Order?

8 MS. SCHMELTZER: The Church did invoke King's  
9 Garden. Quite frankly, I don't think that the Judge applied  
10 King's Garden. When the Judge looked at the record in this  
11 proceeding, he looked at all the positions that became  
12 available and he didn't give us credit for those positions  
13 that were hired based on a need for theology.

14 MS. GREENE: I have a question along that line.

15 Is the special qualification, the need for  
16 theology or the need for membership in the Church, a reason  
17 not to also consider people who have that qualification and  
18 who meet the Commission's concern that the Church make an  
19 effort to recruit people who also represent a diversity of  
20 population?

21 MS. SCHMELTZER: And the Church believes that it  
22 was doing that. The Church was very successful in  
23 recruiting minorities. As the Judge found during the first  
24 part of the license period up until 1987, the Church had  
25 hired at over 100 percent of parity. The Church was

1     successful in recruiting people among the -- from the  
2     religious sources, such as the International Center, which  
3     had a record of being 12 percent minority, through the  
4     Lutheran magazines and publications. And we also used other  
5     recruitment sources during that period of time.

6             MS. GREENE: Did you use the source that went  
7     specifically to minority members of the Lutheran Church, the  
8     authority of those organizations for recruitment?

9             MS. SCHMELTZER: We used general Lutheran sources  
10    that were distributed to all members, including minority  
11    members of the Lutheran Church, yes.

12            Let me just say that I think the prevailing  
13    constitutional and statutory law in this area is very clear.  
14    Section 702 creates a very broad exemption for religious  
15    broadcasters.

16            MS. GREENE: That's under Title VII.

17            MS. SCHMELTZER: That's under Title VII.

18            MS. GREENE: And what responsibility does this  
19    Commission have to enforce Title 7 or to apply Title VII?

20            MS. SCHMELTZER: I think that this Commission does  
21    have a responsibility. At the time that the King's Garden  
22    case came up, the premise of the majority opinion was that  
23    Title VII was unconstitutional. That was later shattered in  
24    the Amos case, which found that Section 702 was  
25    constitutional.

1 CHAIRMAN MARINO: But that was in 1988, Ms.  
2 Schmeltzer.

3 MS. SCHMELTZER: 1987.

4 CHAIRMAN MARINO: '88 or '87. The licensee knew  
5 about it when this case was being argued before the  
6 Commission at the pre-designation stage. And if the  
7 licensee really believed that King's Garden is no longer  
8 good law, that was the time to raise it. The Commission  
9 could then have factored it into the Designation Order and  
10 the ALJ would have had some guidance, the Board would have  
11 had some guidance.

12 But to rely on King's Garden in your pre-hearing  
13 pleadings, and then at the hearing counter with the argument  
14 that King's Garden is now no longer good law doesn't seem to  
15 be the kind of practice that's permitted under the rules, is  
16 it?

17 MS. SCHMELTZER: Well, I don't think that the  
18 Commission can say to the licensee that they're going to  
19 find that the licensee erred in any fashion in this case.

20 First of all, the Religious Freedom Restoration  
21 Act, which also reinforced the Section 702 exemption, was  
22 not released until 1993. And that Act, which has been  
23 upheld in the 9th Circuit recently, and which has been  
24 declared to be retroactive, clearly governs this situation.  
25 I don't think that the Commission can now say, well, we're

1 going to hold you to King's Garden because you didn't argue  
2 back in 1990 that it was unconstitutional.

3 The Commission has to look at this in a fair  
4 manner and apply the constitution.

5 MS. GREENE: Well, even if you are correct in your  
6 argument about King's Garden and Amos, that does not  
7 preclude this Commission from considering the general  
8 outreach effort under its EEO rules with the exception of  
9 the religious qualifications.

10 MS. SCHMELTZER: But it is our position that we  
11 should be exempt under the Amos case.

12 MS. GREENE: From all scrutiny on your EEO  
13 practices?

14 MS. SCHMELTZER: Well, as long as we don't  
15 discriminate. And the Church does not discriminate. The  
16 Church has a long --

17 MS. GREENE: How does the Commission --

18 CHAIRMAN MARINO: But that doesn't make sense --  
19 I'm sorry.

20 MS. GREENE: How does the Commission look at that  
21 issue then?

22 MS. SCHMELTZER: As long as --

23 MS. GREENE: For a religious practice.

24 MS. SCHMELTZER: As long as the Church does not  
25 discriminate, as long as the Church recruits through sources

1     that don't discriminate, then the --

2             MS. GREENE: Is there any obligation under our EEO  
3     rules to affirmatively recruit from sources known to reach  
4     into minority and female communities?

5             MS. SCHMELTZER: We've done that. The Church has  
6     not been guilty of either discrimination or a lack of  
7     affirmative efforts. And I would like to --

8             MS. GREENE: I think we need to talk some about  
9     the affirmative efforts because I think that's one of the --  
10    certainly the issues that the ALJ found wanting, and  
11    something I think we can agree is relevant here.

12            MS. SCHMELTZER: All right. There were two  
13    respects in which the Judge concluded that the Church lacked  
14    candor. One was in describing the minority recruitment  
15    program in the '89 renewal applications. And the second was  
16    in informing the Commission in pleadings that classical  
17    music was a requirement for the position of salesperson at  
18    the FM station.

19            And we think that based on both the facts and the  
20    law that the Judge's lack-of-candor finding has to be  
21    reversed with respect to those two findings.

22            Let me turn first to what Mr. Honig has raised,  
23    which is the classical music argument.

24            According to Mr. Honig, we have to take the HDO as  
25    a conclusion and that is simply not the case. The Hearing

1 Designation Order was based on a very limited set of facts  
2 that the Commission had before it. It did not even have --

3 CHAIRMAN MARINO: Wasn't it based on an admission  
4 made by counsel and the licensee that this is the reason why  
5 our numbers don't look so good, because we have this  
6 problem?

7 MS. SCHMELTZER: What the licensee had argued, and  
8 I would not say it was an admission, the licensee had argued  
9 that they do hire people with theological background for  
10 theological positions. It's our contention there's nothing  
11 wrong with that.

12 And the licensee had argued that the FM station  
13 was a classical music station for which they desired  
14 classical music experience.

15 Now, it was a disinterested third party --

16 CHAIRMAN MARINO: But unfortunately there was  
17 further embellishment on that, wasn't there?

18 MS. SCHMELTZER: But it was argued --

19 CHAIRMAN MARINO: Maybe it was an unfortunate  
20 embellishment, but there was, and in this area there is only  
21 a certain amount of people who have classical music  
22 knowledge a particular minority group may not have.

23 I mean that was all in the pleadings that were  
24 filed at the pre-designation stage before the Commission,  
25 right?



1 MS. SCHMELTZER: Yes. Let me address that point.

2 CHAIRMAN MARINO: Sure.

3 MS. SCHMELTZER: First of all, it was argument of  
4 counsel. And in the Fox Television case, the Court said  
5 that we are not going to infer a lack of candor because of  
6 argument of counsel.

7 MS. GREENE: But we need to go back to the source  
8 of the argument of counsel. I don't think we can overlook  
9 that. And would you address Mr. Stortz' role in providing  
10 information to counsel, in reviewing drafts prepared by  
11 counsel, and in preparing an affidavit saying this is an  
12 accurate reflection of our requirements, our policy.

13 MS. SCHMELTZER: The way it evolved was that Ms.  
14 Cranberg said to Ms. Stortz, "Do you have any requirements  
15 for any of your positions? Are there any specialized  
16 requirements?" And he said, "Well, we do have the theology,  
17 and we have a classical music requirement."

18 Now, perhaps -- Ms. Cranberg candidly admitted  
19 that she would have made the same argument had she used the  
20 word "preference" instead of "requirement."

21 MS. GREENE: But the response came from Mr.  
22 Stortz. Now, Mr. Stortz has been at the station for a long  
23 time and is in, I assume, a management position. He's been  
24 operations manager, acting general manager, general manager  
25 of the station, so he's not unfamiliar.